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No. 137

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In the Supreme Court of the United States

OCTOBER TERM, 1961

PUEBLO DE ISLETA, *Petitioner*

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Indian Claims Commission (Pet. App. 19-53) is reported at 7 Ind. Cl. Comm. 619. The order of the Court of Claims affirming the Indian Claims Commission (Pet. App. 18) is not reported.

JURISDICTION

The order of the Court of Claims affirming the Indian Claims Commission (Pet. App. 18) was entered on March 10, 1961. The petition for a writ of certiorari was filed on June 7, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1) and

Section 20(e) of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 1054, 25 U.S.C. 70s(e).

QUESTION PRESENTED

Whether the Pueblo Lands Board's negotiation of a settlement of a boundary dispute between Indians and non-Indians by an exchange of quitclaim deeds rather than by litigation constitutes less than fair and honorable dealing by the United States with the Indians within the meaning of the Indian Claims Commission Act.

STATUTES INVOLVED

The relevant portions of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. 70-70v, and of the Pueblo Lands Act of June 7, 1924, 43 Stat. 636, are set forth in the petition at pages 4 to 12.

STATEMENT

The petitioner, the Pueblo de Isleta, brought this suit under Section 2, Clause (5), of the Indian Claims Commission Act, 25 U.S.C. 70a, seeking in separate causes of action compensation for the loss of two tracts of land near Albuquerque, New Mexico, on the ground that these losses were the result of unfair and dishonorable dealings on the part of the United States (Pet. App. 21). The Commission held that the petitioner had failed to sustain its allegations and therefore dismissed the action (Pet. App. 54), and the Court of Claims affirmed without opinion (Pet. App. 18). The petition for certiorari apparently seeks review of only so much of the Commission's judgment as pertains to the Peralta tract, the subject of the first

cause of action, no reference being made to the other tract or cause of action.

The Peralta tract consists of 14,710.85 acres and was part of a Spanish land grant known as the Lo de Padilla Grant, which contained 51,940.82 acres (Fdg. 2, Pet. App. 55). Spain granted this land to Diego de Padilla in 1718, and his heirs sold the entire tract to the Pueblo de Isleta in 1750 (Fdg. 12, Pet. App. 60-61). In 1797, the Pueblo sold the portion of the Lo de Padilla Grant, now known as the Peralta tract, to some Spanish settlers, but, because of uncertainty over boundaries, there was continuous controversy between the Indians and non-Indian settlers for many years (Fdg. 15, Pet. App. 63).

In 1848, the United States acquired sovereignty over New Mexico by virtue of the Treaty of Guadalupe Hidalgo, 9 Stat. 922. In order to carry out its obligations under this Treaty and to ascertain what lands in New Mexico were private property, Congress passed the Act of July 22, 1854, 10 Stat. 308, providing for the appointment of a Surveyor General for New Mexico Territory. He was to ascertain the origin, nature, character, and extent of all land claims in the Territory, and to report his findings, conclusions and recommendations to Congress. The petitioner submitted a claim to the Surveyor General under this Act; it was approved by Congress, Act of December 22, 1858, 11 Stat. 374, and a patent was issued to the petitioner for the Isleta Pueblo Grant in 1864. This Grant did not include the tracts involved in this suit. (Fdgs. 8-10, Pet. App. 58-60).

By the Act of March 3, 1891, 26 Stat. 854, Congress established the Court of Private Land Claims, for the adjustment and confirmation of Spanish and Mexi-

can grants in New Mexico. In 1896, that court confirmed the Lo de Padilla Grant "forever to the heirs assigns and legal representatives of Diego de Padilla, free and discharged from any and all claims and demands for or against the same on the part of the United States * * *." On the basis of this determination, the United States in 1908 issued a patent to the Lo de Padilla Grant, but this patent was no more than a quitclaim deed from the United States not affecting any private rights in the land. (Fdgs. 11, 13, 14, Pet. App. 60, 61-63.)

The non-Indians claiming title under the 1797 conveyance of the Peralta tract brought a suit to quiet title in the State District Court, and in 1915 that Court issued a decree in favor of the non-Indians (Fdg. 15, Pet. App. 63-67). But the description of the area in that decree was apparently not specific enough to end the dispute, because there was still a controversy when the Pueblo Lands Board was established in 1924. The dispute over the Peralta tract was but one of many over Pueblo land, there being in 1924 some 3,000 claimants to land within the exterior boundaries of the Pueblo grants in New Mexico. H. Rept. 787, 68th Cong., 1st Sess., Cong. Doc. Ser. No. 8229. To settle the complicated questions of title and to secure for the Indians all of the lands to which they were equitably entitled, or fair compensation for any lands lost because of a failure by the United States seasonably to prosecute the rights of the Indians, Congress passed the Pueblo Lands Act of June 7, 1924, 43 Stat. 636, establishing the Pueblo Lands Board. The Board's duties included reporting on Pueblo lands then in the possession of non-Indian claimants. If the Board found that such tracts could

be, or at any time could have been, recovered for the Indians by the United States by seasonable prosecution, the United States was made liable for such loss and the Board was to determine the amount of loss and award compensation.

The Pueblo Lands Board investigated the Peralta tract controversy and encouraged its settlement by negotiation rather than litigation. In a report submitted in 1928, the Board stated that the title and boundary questions had been resolved by an exchange of quitclaim deeds between the Indians and non-Indians. An area of 14,710.85 acres was segregated from the Lo de Padilla Grant for the non-Indians, who relinquished their claims to the remaining 37,229.97 acres. The Board specifically found that the 14,710.85 acres known as the Peralta tract could not have been recovered for the Indians by seasonable prosecution of suit by the United States and that the Indians were therefore entitled to no compensation for the tract. A later memorandum of the Board stated that the Government could not have recovered the land by seasonable prosecution because title had passed to the non-Indians prior to the cession of New Mexico to the United States (Fdg. 17, Pet. App. 68-71).

The proceedings of the Pueblo Lands Board were later reviewed by Congress because the Pueblos began to indicate their dissatisfaction with the Board's findings by filing independent ejectment suits against the non-Indian settlers (Fdg. 19, Pet. App. 72-73). Testimony before the Subcommittee on Indian Investigation of the Senate Indian Affairs Committee indicated that the Indians thought that the Peralta settlement was fair, although the petitioner's representative said that the Indians should have been awarded some com-

pensation in the matter (Fdg. 20, Pet. App. 73-75). The House Committee on Indian Affairs reported that the Board had made no award for the Peralta tract, "apparently holding in error that it could not have been recovered for the Indians," and recommended payment of $2.00 an acre, or $29,421.70, for the Peralta tract (Fdg. 21, Pet. App. 75). Such an amount was included in the appropriation of May 31, 1933, 48 Stat. 108.

In 1949, the United States placed three tracts in trust for the petitioner, one of which included most of the Peralta tract. This land had been acquired by the United States in the 1930's as part of a submarginal land acquisition program (Fdg. 23, Pet. App. 76).

The petitioner's present claim is premised on the allegation that the Peralta settlement was the result of less than fair and honorable dealings by the United States. But the Indian Claims Commission found (Fdg. 24, Pet. App. 77):

> The Commission finds that the defendant's actions regarding the Peralta tract and the Pueblo of Isleta were not less than fair and honorable; that the Peralta settlement was fairly negotiated before the Pueblo Lands Board and was of benefit to all parties; and that the Exchange Quitclaim Deed was sufficient in form and execution to accomplish the settlement, was made for a mutual consideration, and did not require the subsequent formal approval of the Secretary of the Interior.

ARGUMENT

The petitioner has attempted in this suit to relitigate issues which were settled by the efforts of the Pueblo Land Board, which was established by Congress to settle once and for all the disputes over the

Pueblo lands. Instead of stopping with the determination that the Pueblo title to the Peralta tract had been extinguished and that the United States had not been responsible for the loss of the tract, the Board set out to end the long standing dispute and constant threat of litigation between the settlers and the Indians by negotiating a settlement. The exchange of quitclaim deeds resulting from the negotiations resolved the Peralta boundary dispute, although the Indians later claimed they should have been paid some compensation for the land. They were given $2.00 an acre by Congress in 1933, but now they seek additional compensation.

The petitioner's suit rests on the allegation that the Peralta settlement was the result of less than fair and honorable dealings by the United States. But that allegation has been explicitly rejected by the Indian Claims Commission in Finding 24 (Pet. App. 77). Insofar as this Finding is a finding of fact, it has been affirmed by the Court of Claims and presents nothing for review by this Court. Insofar as it represents a conclusion of law, it is clearly correct. Settlement of boundary and title disputes was the purpose for which Congress created the Pueblo Lands Board. That the Board accomplished this goal by negotiation rather than litigation is certainly consistent with the Congressional purpose, and, in the absence of a showing of fraud or bad faith, raises no serious legal question.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JULY, 1961

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